

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

LYDIA LEE and CAROLYN BISSONETTE, )  
individually and on behalf of others similarly )  
situated, )

Plaintiffs, )

v. )

ENTERPRISE LEASING COMPANY- )  
WEST, LLC, a Delaware LLC; and )  
VANGUARD CAR RENTAL USA, LLC, a )  
Delaware LLC, )

Defendants. )

3:10-CV-00326-LRH-WGC

ORDER

Before the Court is Defendants Enterprise Leasing Company-West, LLC (“Enterprise”) and Vanguard Car Rental USA, LLC’s (“Vanguard”) (collectively “Defendants”) Motion for Summary Judgment on Liability. Doc. #63.<sup>1</sup> Plaintiffs Lydia Lee (“Lee”) and Carolyn Bissonette (“Bissonette”) (collectively “Plaintiffs”) filed a Response (Doc. #90), to which Defendants replied (Doc. #93). Defendants also filed a Motion for Summary Judgment on Damages and Restitution. Doc. #64. Plaintiffs filed a Response (Doc. #88), to which Defendants replied (Doc. #95).

Also before the Court is Plaintiffs’ Motion for Summary Judgment. Doc. #73. Defendants filed a Response (Doc. #81), to which Plaintiffs replied (Doc. #101).

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<sup>1</sup> Refers to the Court’s docket number.

1 **I. Factual Background**

2 This is a putative class action filed on behalf of persons who rented cars from Enterprise  
3 and Vanguard in the State of Nevada. Although involving different parties, the action involves  
4 substantially the same claims and issues that are presented in a separate case currently pending  
5 before this Court, *Sobel v. Hertz Corp.*, No. 3:06-cv-545-LRH-RAM. As in *Sobel*, the dispute in  
6 this case centers on whether Nevada Revised Statute (“NRS”) 482.31575, prior to amendment on  
7 October 1, 2009, allowed Defendants to charge customers a separate airport concession recovery  
8 fee that was not included in the base rental rate as advertised and quoted to customers.<sup>2</sup>

9 The material facts at issue herein are largely undisputed. In order to operate “on-airport,”  
10 McCarran International Airport (“McCarran”) in Las Vegas, Nevada, and Reno-Tahoe International  
11 Airport (“RTI”) in Reno, Nevada, require rental car companies, including Defendants, to pay a  
12 “concession fee” of ten percent of their gross revenue received there.<sup>3</sup> Doc. #74, ¶¶6, 11; Doc. #85,  
13 ¶¶6, 11. These fees are set by contractual agreements called “Concession Agreements.” Doc. #65  
14 (Walker Decl.), ¶9; Doc. #66 (Best Decl.), ¶¶11, 16, 17, Ex. A, Ex. B, Ex. C, Ex. D. Individual  
15 lessees are not party to those agreements. Doc. #74, ¶¶6, 11; Doc. #85, ¶¶6, 11. Although the  
16 airports impose this fee on rental car companies, as opposed to their customers (i.e., the short-term  
17 lessees), Defendants pass along the expense to their customers by imposing a ten-percent surcharge  
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19 <sup>2</sup> As amended, NRS 482.31575 now expressly permits this practice.

20 <sup>3</sup> When NRS 482.31575 went into effect in October 1989, Vanguard, operating as Alamo Rent-  
21 a-Car (“Alamo”), was operating as an “off-airport” rental car company from a privately owned location  
22 near McCarran. Doc. #66 (Best Decl.), ¶9. Enterprise began operating as an off-airport rental car  
23 company near McCarran in 1990. *Id.* In 2002, Defendants independently went on-airport at McCarran.  
*Id.*, ¶11. In January 1998, Alamo began operating on-airport at RTI. *Id.*, ¶16. Enterprise began  
24 operating on-airport at RTI in May 2002. *Id.*, ¶17.

25 To the extent Defendants dispute whether all on-airport car rental companies in Nevada were  
26 subject to a minimum annual guarantee (Doc. #85, ¶6), the Court finds resolution of this issue, as well  
as any dispute regarding the exact percentage of gross revenues constituting the concession fee at  
various Nevada airport locations, to be immaterial to a determination of the present dispute.

1 on the base rental rate as a so-called “airport concession recovery fee” (“ACRF”).<sup>4</sup> Doc. #74, ¶¶9,  
 2 14; Doc. #85, ¶9, 14. At all relevant times, Defendants “unbundled” the ACRF from their base  
 3 rental rates. Doc. #74, ¶16; Doc. #85, ¶16. In essence, Defendants advertised and quoted to  
 4 customers a base rental rate that did not include the separate ACRF that Defendants ultimately  
 5 charged their customers. *Id.*

## 6 **II. Legal Standard**

7 Summary judgment is appropriate only when the pleadings, depositions, answers to  
 8 interrogatories, affidavits or declarations, stipulations, admissions, and other materials in the record  
 9 show that “there is no genuine issue as to any material fact and the movant is entitled to judgment  
 10 as a matter of law.” Fed. R. Civ. P. 56(a). In assessing a motion for summary judgment, the  
 11 evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the  
 12 light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio*  
 13 *Corp.*, 475 U.S. 574, 587 (1986); *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154  
 14 (9th Cir. 2001).

15 The moving party bears the initial burden of informing the court of the basis for its motion,  
 16 along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v.*  
 17 *Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the  
 18 moving party must make a showing that is “sufficient for the court to hold that no reasonable trier  
 19 of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259  
 20 (6th Cir. 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).  
 21 On an issue as to which the non-moving party has the burden of proof, however, the moving party

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23 <sup>4</sup> On April 1, 2006, Lee rented a car from Enterprise at McCarran in Las Vegas, Nevada. Doc.  
 24 #74, ¶3; Doc. #85, ¶3. In addition to the base rental rate, Enterprise charged an additional \$7.92, which  
 25 Enterprise described on her rental documents as an “AP/Access 10.000%.” *Id.* Similarly, on February  
 26 24, 2008, Bissonette rented a car from Alamo, at McCarran in Las Vegas, Nevada. Doc. #74, ¶5; Doc.  
 #85, ¶5. In addition to the base rental rate, Bissonette was charged a “Concession Recovery Fee  
 @10.000%” in the amount of \$40.60. *Id.*

1 can prevail merely by demonstrating that there is an absence of evidence to support an essential  
2 element of the non-moving party's case. *Celotex*, 477 U.S. at 323.

3 To successfully rebut a motion for summary judgment, the non-moving party must point to  
4 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v.*  
5 *Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A "material fact" is a fact "that might  
6 affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
7 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary  
8 judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute  
9 regarding a material fact is considered genuine "if the evidence is such that a reasonable jury could  
10 return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248. The mere existence of a  
11 scintilla of evidence in support of the party's position is insufficient to establish a genuine dispute;  
12 there must be evidence on which a jury could reasonably find for the party. *See id.* at 252. Finally,  
13 whereas here, both sides have moved for summary judgment, the court must consider evidence  
14 submitted in support of both motions before ruling on either motion. *See Fair Housing Council of*  
15 *Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001).

### 16 **III. Discussion**

#### 17 **A. Defendants' Motion for Summary Judgment on Liability**

##### 18 **1. Interpretation of NRS 482.31575**

19 Defendants seek summary judgment on the ground that their business practice of  
20 unbundling the ACRFs did not violate NRS 482.31575. As Defendants are admittedly aware, in  
21 *Sobel*, this Court held "as a matter of law" that, prior to its amendment in 2009, "section 482.31575  
22 required [on-airport] rental car companies to include the [ACRF] in the base rate that they  
23 advertised, quoted, and charged to short-term lessees," such that it was unlawful to charge an  
24 unbundled ACRF on top of the advertised and quoted base rental rate. *Sobel v. Hertz Corp.*, 698 F.  
25 Supp. 2d 1218, 1232 (D. Nev. Mar. 17, 2010) (No. 3:06-cv-545-LRH-RAM, Doc. #111) (order on  
26 summary judgment) ("*Sobel II*"); accord *Sobel v. Hertz Corp.*, 2007 WL 2710725, \*4 (D. Nev.

1 Sept. 13, 2007) (No. 3:06-cv-545-LRH-RAM, Doc. #22) (order on motion to dismiss) (“*Sobel I*”).  
2 Nevertheless, Defendants urge the Court “to rule on the issue once again, because the record here is  
3 different than in *Sobel*.” Doc. #63, p. 19. Specifically, Defendants argue that the Court did not  
4 have the benefit of testimony from airport officials regarding the nature and purpose of airport fees  
5 or the manner in which the statute was interpreted and applied by Nevada officials for the past 25  
6 years. *Id.*; Doc. #93, p. 13.

7 As a preliminary matter, the Court notes its agreement with Plaintiffs as to the precedential  
8 effect of the Court’s rulings in *Sobel*. Indeed, “judicial precedent attaches a specific legal  
9 consequence to a detailed set of facts in an adjudged case or judicial decision, which is then  
10 considered as furnishing the rule for the determination of a subsequent case involving *identical or*  
11 *similar material facts* and arising in the *same* court or a lower court in the judicial hierarchy.”  
12 *United States v. Osborne (In re Osborne)*, 76 F.3d 306, 309 (9th Cir. 1996) (emphasis added).  
13 Insofar as *Sobel* announced a decision on a point of law, the Court owes obedience to that decision  
14 and, thus, shall not disturb its ruling in that regard. Moreover, to the extent that the material facts  
15 of this case are nearly identical to those of *Sobel*, the Court is not inclined to revisit prior  
16 determinations as to the application of NRS 482.31575. Nevertheless, as Defendants aver, the  
17 result in this case is not pre-ordained by *Sobel*. As such, the Court shall address each of  
18 Defendants’ arguments as they relate to the unique facts of this case.

### 19 ***Evidentiary Record***

20 First, Defendants contend that the evidentiary record in the present case supports a different  
21 interpretation of NRS 482.31575 than was announced in *Sobel*. Specifically, Defendants argue, the  
22 phrase “any fees paid to airports” means any fees that a rental car company collects from customers  
23 and pays to the airport. *See* Doc. #63, pp. 19-20. The Court disagrees. In addressing Defendants’  
24 argument to this effect in its September 10, 2012 Order, the Court found that:

25 [a] critical part of the [C]ourt’s reasoning [in *Sobel*] was that the statute’s reference  
26 to “any fees paid to airports” that a short-term lessee “must pay” refers only to  
charges that the airports require to be paid by the rental car customer and “over

1        which the leasing company would have no control.” . . . Contrary to Defendants’  
 2        argument, this unequivocally does *not* include airport concession fees that the car  
 3        rental companies pass along to their customers at their own option.  
 4        Doc. #44, p. 7 (citing *Sobel I*, 2007 WL 2710725, \*2-3). As a consequence of the Court’s  
 5        interpretation in this regard, the statute affords different treatment to off-airport rental car fees (i.e.,  
 6        “access fees”) than to on-airport rental car fees (i.e., concession fees).<sup>5</sup> While both types of fees are  
 7        payable to the airport, the former are imposed on short-term lessees,<sup>6</sup> whereas the latter are imposed  
 8        on rental car companies.

9        Defendants’ attempt to equate the off-airport access fee with the on-airport concession fee is  
 10        unavailing and unsupported by the evidence. Specifically, Defendants argue that Clark County  
 11        Ordinance 20.09.010 imposes an access fee on the rental car companies as opposed to their  
 12        customers. However, a plain reading of the ordinance indicates that off-airport rental car  
 13        companies have a legal obligation to “collect and pay” the access fee. *See* Doc. #65 (Walker  
 14        Decl.), Ex. C (Clark County Ordinance 20.09.010(c)(6)(B)) (“[s]uch operators will collect and pay  
 15        an airport access fee . . .”). As such, the short-term lessee bears the ultimate legal obligation to pay  
 16        the access fee that is collected by the off-airport rental car company and paid to the airport. In  
 17        contrast, no such legal obligation to pay the concession fee is born by short-term lessees who rent  
 18        cars from on-airport rental car companies. Instead, the legal obligation to pay the concession fee  
 19        rests solely with the on-airport rental car companies. Nothing requires those on-airport rental car  
 20        companies, including Defendants, to pass that fee along to their customers in the form of an ACRF.

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21        <sup>5</sup> Defendants argue that “[t]he fundamental *premise* of [the Court’s] interpretation of [NRS]  
 22        482.31575 advanced in *Sobel* is that the statute accords different treatment to off-airport rental car fees  
 23        imposed by Ordinance than to on-airport fees imposed by contract.” Doc. #63, p. 20 (emphasis added).  
 24        However, that the statute affords different treatment to off-airport rental car fees imposed by ordinance  
 25        than to on-airport fees imposed by contract is not a *basis* on which the Court’s reasoning proceeds.  
 26        Rather, the differential treatment in this regard is a *consequence* of the Court’s reasoning.

<sup>6</sup> Specifically, Clark County Ordinance 20.09.010 requires off-airport rental car companies to  
 “collect and pay an airport access fee . . . for each contract written for the vehicle rentals to customers  
 picked up at the [airport] and transported to operator’s place of business.” Doc. #65, Ex. C.

1 Accordingly, the access fee that short-term lessees who rent cars from off-airport rental car  
2 companies must pay to the airport is distinct from the concession fee that on-airport rental car  
3 companies must pay to the airport. *See* Doc. #44, p. 7. The Concession Agreements which  
4 governed Defendants' relationship with the airports at the time of Plaintiffs' rentals explicitly  
5 recognize this distinction in section 3.5—"none of those payments, [referring to the ACRFs]  
6 reflects a fee that is imposed by the County upon customers renting vehicles from Concessionaire."  
7 Doc. #66, Ex. A, Ex. B.

8 Defendants go to great lengths to argue that the Court's construction requires a re-writing of  
9 the statute such that only those "fees imposed by a local government agency paid directly to  
10 airports by the customer and not by the short term-lessor" [sic] are exempt. *See* Doc. #93, pp. 14-  
11 15. Defendants miss the point. The statute does not distinguish between access fees and  
12 concession fees. Instead, the statute distinguishes between "fees paid to airports" and other fees not  
13 paid to airports. That access fees and concession fees (and, by extension, ACRFs) are treated  
14 differently under the statute does not change its mandate. Nor does it require the Court to engage in  
15 "judicial legislation and rewrite the statute," as Defendants suggest. The simple fact remains: the  
16 ACRF is not a fee paid to airports, it is a fee paid to Defendants. That Defendants opted to pass  
17 along the concession fee to their customers does not render the ACRF a "fee paid to airports." In  
18 the Court's view, it is Defendants who are attempting to re-write the statute by insinuating that the  
19 exceptions thereunder apply only when a customer pays a fee "directly" to the airport—i.e., without  
20 using the rental car company as a conduit. *See* Doc. #81, pp. 8-9. However, the statute simply does  
21 not require that the fee be paid by the customer to the airport in this manner. As such, the Court  
22 concludes that the access fee that off-airport rental car companies charge to their customers on  
23 behalf of the airport—as with any other state or county tax—falls within the statute's exceptions.

24 Nevertheless, whether the access fees applicable to off-airport lessees are exempt under the  
25 statute is immaterial at this juncture, as Defendants were operating on-airport at all relevant times.  
26 Moreover, even if the access fees are not exempt, it does not render the phrase "any fees paid to

1 airports” nugatory as Defendants suggest. Indeed, it is certainly conceivable that the Nevada  
2 Legislature anticipated a situation in which rental car customers would be subject to a fee payable  
3 to the airport rather than the rental car companies themselves. And because the undisputed purpose  
4 of NRS 482.31575 was to protect rental car customers from the *rental car companies’* misleading  
5 advertising practices, the only logical inference is that the legislature would have exempted those  
6 mandatory fees over which the rental car companies have no control.

7 The Court is similarly unpersuaded by Defendants’ argument that the concession fee  
8 charged by the airports is *not* “an ordinary operating expense voluntarily assumed by the rental car  
9 company” that is merely “the rental car company’s cost of doing business.” In *Sobel*, the Court  
10 determined that the concession fee does indeed “represent[] the rental car company’s cost of doing  
11 business for the advantage of operating on the airport.” *Sobel I*, 2007 WL 2710725, at \*2. In this  
12 regard, the Court maintains the reasoning set forth therein:

13 What the rental company chooses to contract for with the airport is a contract  
14 obligation of the company alone; it does not constitute a fee for which the short-term  
15 lessee is responsible. The amount of the surcharge is arbitrarily determined by the  
16 on-airport rental company, and it represents nothing more than a recoupment of an  
ordinary operating expense voluntarily assumed by the rental company. Thus, the  
airport fee surcharge is not an airport fee. Rather, it is a surcharge for an operating  
expense of the rental company.

17 *Id.* That the fee is not “fixed” in a manner analogous to rent—the fee is imposed in proportion to  
18 the rental car company’s gross operating revenue—does not change its character in this regard.  
19 Moreover, Defendants miss the mark when they urge that the concession fee is not voluntarily  
20 assumed, as the voluntariness of the concession fee is not at issue. Rather, the only issue in this  
21 regard is whether Defendants’ imposition of an ACRF on its customers is voluntary. As the Court  
22 has already determined, it is. Further, while the airport’s “purpose and rationale” for collecting the  
23 access fee and the concession fee may be exactly the same in both circumstances,<sup>7</sup> this fact is

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25 <sup>7</sup> Defendants urge, and Plaintiffs do not dispute, that the purpose of both the access fee and the  
26 concession fee is to compensate the airport for the use of airport facilities and services, such as  
roadways and curbsides, that are used in common with other airport users.



1 immaterial, as the critical question revolves around the manner in which the fee was imposed. In  
 2 this regard, the statute is clear—only those fees that a short-term lessee must pay to airports are  
 3 exempt from mandatory inclusion in the advertised, quoted, and charged rental rate.

4 Finally, Defendants provide no authority for the proposition that “the practical construction  
 5 of [NRS] 482.31575 by all relevant parties—including Nevada officials, local airport authorities,  
 6 [those in the] rental car industry, and legal counsel—to permit ACRFs to be separately quoted and  
 7 charged . . . is entitled to great weight and should be adopted and enforced by the court.” *See* Doc.  
 8 #63, p. 21. The cases to which Defendants cite simply do not stand for that proposition. *See*  
 9 *Stuhmer v. Centaur Sculpture Galleries*, 110 Nev. 270, 871 P.2d 327, 330 (1994) (finding that  
 10 “[t]he best approach for courts to use in interpreting a *contract* that is ambiguous is to ‘delve  
 11 beyond the express terms of a written contract’ and ‘examine the circumstances surrounding the  
 12 parties’ agreement . . . [including the] subsequent acts and declarations of the parties”) (emphasis  
 13 added); *see also United States Cellular Inv. Co. v. GTE Mobilenet, Inc.*, 281 F.3d 929, 937 (9th  
 14 Cir. 2002) (“[u]nder California law, a court may consider the subsequent acts and conduct of the  
 15 parties in the execution of the *contract* in order to determine the intent of those parties”) (emphasis  
 16 added). Moreover, Defendants’ assertion that “all relevant parties” agreed that NRS 482.31575  
 17 permitted separate itemization of ACRFs is disingenuous at best. As the Court will more fully  
 18 address in rejecting Defendants’ “fair notice” defense, the parties to which Defendants refer were  
 19 not in agreement as to the legal effect of NRS 482.31575, nor were they responsible for interpreting  
 20 or enforcing the statute. *See* Section III.A.2. *infra*. Accordingly, the Court declines to give their  
 21 understanding of NRS 482.31575 “great weight” as Defendants urge.

### 22 ***Legislative History***

23 Defendants again dispute the Court’s interpretation of the statute’s legislative history in  
 24 *Sobel*. In that case, the Court addressed both the legislative history of the pre-2009 version of the  
 25 statute, *see Sobel I*, 2007 WL 2710725, \*2-3, and the effect of the 2009 amendment, *see Sobel II*,  
 26 698 F. Supp. 2d at 1224-26. Here, however, Defendants fail to present any new evidence to

1 undermine the Court's earlier determination as to legislative intent. Accordingly, the Court, again,  
 2 declines to reconsider its prior findings in this regard. *See* Doc. #44, p. 7 (declining to reconsider  
 3 prior ruling).

## 4                   2.       Due Process Defense

5           Defendants also raise an as-applied "fair notice" defense under the Due Process clause of  
 6 the United States Constitution. Defendants urge that their experience as on-airport rental car  
 7 companies was far different than that of Hertz and, thus, the result of this case should not be driven  
 8 by *Sobel*. Specifically, Defendants cite the fact that prior to their entry into the on-airport market,  
 9 they operated as off-airport companies, during which time they separately itemized airport fees on  
 10 customer invoices in a manner which all parties, including Plaintiffs, concede was in full  
 11 compliance with NRS 482.31575. They claim that when they entered the market as on-airport  
 12 companies, "administrators at McCarran, Nevada law enforcement officials, and all other rental car  
 13 companies in the market agreed that [NRS 482.31575] allowed [on-airport] companies to itemize  
 14 the ACRF." Doc. #63, p. 23. Accordingly, Defendants argue, NRS 482.31575 failed to provide the  
 15 requisite reasonable notice to persons of ordinary intelligence of what conduct was permitted or  
 16 proscribed.

17           Indeed, "[a] fundamental principle in our legal system is that laws which regulate persons  
 18 or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television*  
 19 *Stations, Inc.*, 132 S.Ct. 2307, 2317 (2012) (citing *Papachristou v. Jacksonville*, 405 U.S. 156, 162  
 20 (1972)). "A conviction or punishment fails to comply with due process if the statute or regulation  
 21 under which it is obtained 'fails to provide a person of ordinary intelligence fair notice of what is  
 22 prohibited, or is so standardless that it authorizes or encourages seriously discriminatory  
 23 enforcement.'" *Id.* (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)). "The degree of  
 24 vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair  
 25 enforcement—depends in part on the nature of the enactment." *Vill. of Hoffman Estates v.*  
 26 *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). Civil laws are held to a less strict

1 vagueness standard than criminal laws “because the consequences of imprecision are qualitatively  
 2 less severe.”<sup>8</sup> *Id.* at 498-99. Additionally, economic regulations are “subject to a less strict  
 3 vagueness test because . . . businesses, which face economic demands to plan behavior carefully,  
 4 can be expected to consult relevant legislation in advance of action.” *Id.*

5 Whereas here, a defendant raises an “as-applied” challenge, the court must consider  
 6 “whether a statute is vague as applied to the particular facts at issue,” for a defendant “who engages  
 7 in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied  
 8 to the conduct of others.” *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18-19 (2010) (internal  
 9 quotation marks omitted). As such, a court need only determine whether the statute was vague “as  
 10 applied to [that] particular defendant[.]”—in other words, whether the defendant “in fact had fair  
 11 notice that the statute and regulations proscribed [the] conduct.” *United States v. Hsu*, 364 F.3d  
 12 192, 196 (4th Cir. 2004). Because “[o]bjections to vagueness under the Due Process Clause rest on  
 13 the lack of notice, [they] may be overcome in any specific case where reasonable persons would  
 14 know that their conduct is at risk.” *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988).

15 In reviewing a statute’s language for vagueness, “we are relegated . . . to the words of the  
 16 ordinance itself, to the interpretations [other courts have] given to analogous statutes, and perhaps  
 17 to some degree, to the interpretation of the statute given by those charged with enforcing it.”  
 18 *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (internal quotation marks and footnotes  
 19 omitted). Because legislators are “[c]ondemned to the use of words, we can never expect  
 20 mathematical certainty from [their] language.” *Id.* As such, courts are to be “mindful that ‘due  
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22 <sup>8</sup> Defendants cite *LVRC Holdings LLC v. Brekka* for the proposition that, whereas here, a  
 23 statute has both civil and criminal applications, the due process analysis is the same. *See* Doc. #63,  
 24 p. 16. In *LVRC Holdings*, the Ninth Circuit stated that where a statute has both civil and criminal  
 25 applications “courts should *interpret the statute consistently in both criminal and noncriminal*  
 26 *contexts.*” 581 F.3d 1127, 1135-36 (9th Cir. 2009) (citing *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8  
 (2004)) (emphasis added). The Ninth Circuit did not, however, state that the due process analysis is  
 the same in both the criminal and civil contexts. Nor is the Court inclined to extend the Ninth Circuit’s  
 pronouncement in this manner. Nevertheless, the Court finds that Defendants had fair warning of the  
 proscribed conduct under either vagueness standard.

1 process does not demand unattainable feats of statutory clarity,’ . . . and that ‘absolute precision in  
2 drafting laws is not demanded,’ particularly where the law does not impose a criminal penalty.”  
3 *Planned Parenthood of Cent. & N. Ariz. v. State of Ariz.*, 718 F.2d 938, 948 (9th Cir. 1983)  
4 (quoting *United States v. Maude*, 481 F.2d 1062, 1068 (D.C. Cir. 1973); *High Ol’ Times, Inc. v.*  
5 *Busbee*, 673 F.2d 1225, 1229 (11th Cir. 1982)). Here, the Court finds that a reasonable reading of  
6 the statute, in light of its legislative history and purpose, as well as the interpretations thereof by  
7 relevant authorities, afforded Defendants fair notice that their conduct was at risk.

8 Defendants urge that, because the Court has already made a finding that the statute was “an  
9 ambiguous and poorly-drafted statute that is capable of being understood in two or more senses,” it  
10 could not have provided “person[s] of ordinary intelligence fair notice of what is prohibited.” *See*  
11 *Doc. #63*, p. 17; *see also Sobel I*, 2007 WL 2710725, at \*2 (“[i]n light of the substantial uncertainty  
12 surrounding section 482.31575’s requirements, it would be difficult to establish that Hertz  
13 intentionally circumvented the requirements of the statute”). However, Defendants assume too  
14 much in reaching this conclusion. That a statute is ambiguous and poorly-drafted does not render it  
15 violative of due process. Indeed, “[s]ubstantial numbers of lawsuits arise out of disagreements over  
16 the precise meaning of a statute. The potential for such differences of opinion cannot be enough to  
17 render a statute void for vagueness.” *Planned Parenthood*, 718 F.2d at 948. In *Sobel*, the Court  
18 found that NRS 482.31575’s ambiguities “require[d] . . . consider[ation of] the intended meaning  
19 of the words . . . as well as [the] legislative intent underlying the statute.” *Sobel I*, 2007 WL  
20 2710725, at \*2. Ultimately, the Court resolved these ambiguities by holding “that the legislature  
21 intended that the words ‘any fees paid to airports’ be used and understood as any fees paid directly  
22 to airports by short-term lessees.” *Id.*

23 Moreover, the statutory terminology at issue—“any fees paid to airports”—is vastly  
24 different from the sort that courts have previously declared to be vague. *See Humanitarian Law*  
25 *Project*, 561 U.S. at 20 (noting that “in the past, [the court has] ‘struck down statutes that tied  
26 criminal culpability to whether the defendant’s conduct was ‘annoying’ or ‘indecent’—wholly

1 subjective judgments without statutory definitions, narrowing context, or settled legal meanings”)  
2 (quoting *Williams*, 553 U.S. at 306) (internal quotation marks omitted). NRS 482.31575 simply  
3 does not implicate any concern over subjective judgment. Nor is the statute without narrowing  
4 context such that the companies to which it applied would not have had notice of the prohibited  
5 conduct at issue. Indeed, the manner in which the exception was narrowed—only those fees paid to  
6 airports—falls squarely in line with the consumer protection purpose of the statute. Accordingly,  
7 for all of the aforementioned reasons, the Court rejects Defendants’ contention that the statute itself  
8 was so vague that it failed to provide them with fair notice of the prohibited conduct.

9 Defendants further argue that “*all* affected parties—the car rental companies, the airport  
10 administrators, and the Nevada law enforcement officials<sup>9</sup>—all had considered the language of  
11 [NRS] 482.31575 prior to the time of Plaintiffs’ rental transactions, and they all believed that  
12 separately itemizing the ACRF was legal and permissible.” *See* Doc. #63, p. 18. Central to  
13 Defendants’ argument in this regard is an assumption that because “*all* affected parties”  
14 misunderstood the statute, it could not possibly have provided the requisite “fair notice” under the  
15 Due Process clause. The Court perceives two problems with Defendants’ argument. First,  
16 Defendants’ assertion that “all relevant parties—including Nevada officials, local airport  
17 authorities, [those in the] rental car industry, and legal counsel”—construed the statute to permit  
18 ACRFs to be separately quoted and charged is disingenuous at best. Second, none of the affected  
19 parties who supposedly believed that NRS 482.31575 allowed the separate itemization of the  
20 ACRFs were charged with its implementation or enforcement. The Court will address each of  
21 these issues in turn.

22 While Defendants urge that *all* affected parties believed that NRS 482.31575 allowed the  
23 separate itemization of ACRFs, the evidence is far from clear in that regard. Specifically,  
24 Defendants cite the opinions of Hertz, and other on-airport rental car companies; Las Vegas

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25 <sup>9</sup> Defendants concede that the “law enforcement” officials to which they refer were not actually  
26 law enforcement officials at all. Rather, Nevada peace officers and the Department of Transportation  
are responsible for enforcement of NRS 482.31575. *See* Doc. #63, p. 18.

1 Attorney, Zev E. Kaplan (“Kaplan”); Clark County Deputy District Attorney, Lee Thompson  
2 (“Thompson”); and former Clark County Director of Aviation, Randall Walker’s (“Walker”), all of  
3 which arose in the context of an attempt by Hertz in the early 1990s to “level the playing field”  
4 between on-airport and off-airport rental car companies.

5 First, Defendants argue that Hertz and other on-airport rental car companies reasonably  
6 believed that they could separately itemize the amount of airport fees were it not for the contractual  
7 obligation to bundle the airport fees with the base rental rate. *See id.* at 3. Indeed, the Concession  
8 Agreements in effect before December 1995 required on-airport rental car companies to bundle the  
9 ACRF with the base rental rate.<sup>10</sup> *See* Doc. #65 (Walker Decl.), ¶16. In contrast, off-airport  
10 companies were allowed to advertize and quote their base rental rate without including the access  
11 fee. *Id.* As a result of this differential treatment, off-airport rental car companies became more  
12 competitive, displacing business from on-airport rental car companies. *See id.* In response, Hertz  
13 and other on-airport rental car companies lobbied for passage of Senate Bill 396 (“SB 396”) in an  
14 attempt to remove the phrase “any fees paid to airports” from NRS 482.31575 so that off-airport  
15 rental car companies would also be required to bundle their fees.<sup>11</sup> *See id.*; *see also* Doc. #69-4  
16 (Scancarelli Decl.), Ex. 3. Numerous off-airport rental car companies, including Enterprise and  
17 Alamo, opposed SB 396. *See* Doc. #23-5 (O’Brien Decl.), Ex. C-1, pp. 20-30; *see also* Doc. #69-4  
18 (Scancarelli Decl.), Ex. 3, pp. 5-18 (Mason Hurst’s, of Alamo, testimony before the Senate  
19 Committee on Transportation in opposition to the bill). Ultimately, the Nevada State legislature  
20 declined to adopt SB 396. *See* Doc. #65 (Walker Decl.), ¶16. Clark County did, however, amend  
21 Ordinance 20.09.010 such that off-airport rental car companies were required to collect and pay  
22 eight percent of their gross revenue from rental car customers to the airport. *See id.*

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23  
24 <sup>10</sup> Since December 1995, the Clark County Department of Aviation has permitted “on-airport”  
25 rental car companies to separately itemize ACRFs on customer invoices. Doc. #65 (Walker Decl.),  
26 ¶12.

<sup>11</sup> Defendants admission in this regard indicates that Hertz and other on-airport rental car  
companies believed that NRS 482.31575 exempted off-airport access fees.

1 In a further effort to persuade McCarran officials to drop the bundling requirement, Hertz  
2 sought a legal opinion regarding the application of NRS 482.31575 to the fees imposed at  
3 McCarran under its existing Concession Agreements with Clark County. *See id.*, ¶17, Ex. D. Las  
4 Vegas Attorney, Kaplan, opined that NRS 482.31575 actually prohibited rental car companies from  
5 bundling “airport fees” in the advertising, quoting, and charging of rental car rates. *Id.* After  
6 reviewing Kaplan’s opinion, then Clark County Director of Aviation, Robert Broadbent  
7 (“Broadbent”), sought advice from the airport’s legal counsel, Clark County Deputy District  
8 Attorney, Thompson. *See id.*, ¶17, Ex. E. In response thereto, Thompson stated that “[t]here is a  
9 valid concern that the statute precludes the inclusion of the concession fees charged by the County  
10 from being included in the advertised, quoted, and charged car rental rates. This may be an  
11 appropriate question to put to the Attorney General.” *Id.* Based on Thompson’s concern,  
12 McCarran waived the contractual provision requiring on-airport rental car companies to bundle the  
13 ACRFs with the base rental rates. *See id.*, ¶18. Thereafter, in revising its Concession Agreements,  
14 McCarran expressly permitted on-airport rental car companies to separately itemize the ACRF on  
15 customer invoices. *See id.*, ¶19. Randall Walker (“Walker”)<sup>12</sup> testified that “[a]t all times since  
16 December 1995, the [Clark County] Department of Aviation has permitted on-airport rental car  
17 companies to separately itemize on customer invoices the proportionate amount of concession fees  
18 to be paid to the County for the privilege of using airport roadways, curbsides, and other airport  
19 facilities and services. Such was the practice of the existing on-airport rental car companies in  
20 2002, when both Enterprise and Alamo were awarded airport concessions and switched from being  
21 off-airport to on-airport companies.” *Id.*

22 As the aforementioned evidence demonstrates, the “affected parties” simply did not agree  
23 that NRS 482.31575 unequivocally permitted the separate itemization of ACRFs. First, the fact  
24 that Hertz and other on-airport rental car companies objected to the off-airport practice of  
25 separately itemizing the access fees paid to the airports is not evidence that they believed they could  
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<sup>12</sup> Walker was the Clark County Director of Aviation when Defendants went on-airport.



1 do so as well under NRS 482.31575. In fact, that they pursued a legal opinion as to the statute's  
 2 mandate at a time when they were bundling ACRFs indicates that they believed the statute to be  
 3 susceptible to such a requirement. Second, only Kaplan opined that NRS 482.31575 prohibited the  
 4 bundling of ACRFs. Third, Thompson merely opined that the statutory language was not "entirely  
 5 clear," and advised that an inquiry to the Attorney General may be appropriate. He did not,  
 6 however, indicate an opinion as to whether NRS 482.31575 permitted the separate itemization of  
 7 ACRFs. Nor is there any indication that the Attorney General was consulted or issued an opinion  
 8 on the subject. Fourth, the fact that McCarran dropped the requirement that on-airport rental car  
 9 companies bundle the ACRF on customer invoices is not evidence of a belief that NRS 482.31575  
 10 permitted the separate itemization of ACRFs. Clark County's Concession Agreements permitted  
 11 rental car companies to unbundle the ACRFs "provided that [they] . . . comply with all applicable  
 12 laws."<sup>13</sup> As such, the Airport Authority clearly recognized the possibility that other laws would

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13  
 14 <sup>13</sup> To the extent Defendants argue that the RTI Airport Authority required them to charge their  
 15 customers a separate ACRF, the Court disagrees. Section 1.13 of the Concession Agreement to which  
 16 Defendants refer requires that "[c]oncessionaire shall *list separately on any customer rental*  
 17 *agreements, contracts or invoices*, the concession fee payable by the [c]oncessionaire to the [Airport]  
 18 Authority for the privilege of doing business at the Airport under this Agreement. . . . Concessionaire  
 19 shall not in any way attribute such amounts or the charging of such amounts to the [Airport] Authority  
 20 or the Airport." Doc. #66, Ex. C, p. 6; Doc. #66, Ex. D, p. 6. In contrast, NRS 482.31575 requires  
 21 short-term lessors to "*advertise, quote and charge* a rate for leasing a passenger car that includes the  
 22 entire amount . . . ." The Court interpreted this requirement to include the ACRFs that  
 23 concessionaire/lessors pass along to short-term lessees. *See Sobel I*, 2007 WL 2710725, at \*2. That  
 24 a concessionaire might be required to *list* separately on customer rental agreements, contracts, and  
 25 invoices the fact that the base rental rate is comprised of an ACRF does not conflict with NRS  
 26 482.31575's requirement that the ACRF be included in the advertised, quoted, and charged base rental  
 rate. Accordingly, the Court finds that the Concession Agreement to which Defendants refer does not  
 preclude compliance with NRS 482.31575.

Moreover, the language in the Concession Agreement to which Defendants refer provides  
 further support for the Court's interpretation of the NRS 482.31575. Specifically, section 1.13  
 explicitly recognizes that the concession fee is payable by the concessionaire to the airport and further  
 warns that the "[c]oncessionaire shall not in any way attribute such amounts or the charging of such  
 amounts to the [Airport] Authority or the Airport." The RTI Airport Authority obviously understood  
 that the concession fee payable by the concessionaire to the airport was separate and distinct from the



1 dictate whether the rental car companies could unbundle the ACRFs. *Id.*, Ex. B. p. 11. Finally,  
2 Walker's testimony that he and all others "always read, understood, and applied the statute" to  
3 permit "the amount of any fees that the [on-airport] companies paid to the airport, including the  
4 ACRF, to be separately itemized" is contradicted by the RTI Airport Authority's 2004 request for  
5 bids from car rental companies seeking concessions at the airport. In response to an inquiry as to  
6 why the requirement that ACRFs be separately stated was deleted, the Airport Authority responded  
7 that "[t]he Concession Fee is a cost of doing business, owed by the Concessionaire, not by its  
8 customers to the [Airport] Authority pursuant to the Concession Lease[.]" Doc. #90-5, Ex. 4, pp.  
9 8-9. In a 2004 addendum, the Airport Authority reiterated that "the [Concession Fee] is a cost of  
10 doing business to the concessionaire and not a pass-through tax on the rental customer." Doc. #90-  
11 6, Ex. 5, p. 4. Accordingly, the Court rejects Defendants' contention that *all* affected parties  
12 believed that NRS 482.31575 permitted the separate itemization of ACRFs. The evidence in this  
13 regard speaks for itself.

14 Nevertheless, ignoring for a moment the indisputable fact that *not all* affected parties  
15 definitively believed that NRS 482.31575 permitted the separate itemization of ACRFs, Defendants  
16 fail to cite any authority for the proposition that the opinions on which they allegedly relied are  
17 authoritative interpretations of the statute such that they are entitled to any weight in the Court's  
18 determination of whether the statute provided fair notice. As noted above, none of the affected  
19 parties who supposedly believed that NRS 482.31575 allowed the separate itemization of ACRFs

20 \_\_\_\_\_  
21 ACRF that the concessionaire might charge to its customers as a way of recouping the cost of the  
22 concession fee.

23 Finally, the agreements between RTI and Alamo and RTI and Enterprise to which Defendants  
24 refer were executed in 1997 and 1998, respectively, and Defendants admit that this form of agreement  
25 did not govern the parties relations at the time the Plaintiffs rented their vehicles. *See* Doc. #66, Ex.  
26 C, p. 48; Doc. #66, Ex. D, p. 48. In this regard, Defendants admit that the RTI Concession Agreement  
in effect after July 1, 2005 did not require "on-airport" rental car companies to charge its customers  
a separate ACRF. *See* Doc. # 85, ¶8. Rather, these contracts were silent as to the manner in which the  
ACRF could be stated on customer invoices. *See* Doc. #73-7, Ex. 6.

1 were charged with its implementation or enforcement.<sup>14</sup> *See Roberts v. State of Nevada*, 104 Nev.  
 2 33, 752 P.2d 221, 225 (1988) (“constructions of state statutes by administrative agencies charged  
 3 with their implementation are entitled to great weight”); *see also Grayned*, 408 U.S. at 110 (finding  
 4 “the interpretation of the statute given by those charged with enforcing it” relevant “perhaps to  
 5 some degree” in a court’s analysis of the statute’s vagueness). Accordingly, those beliefs are not  
 6 entitled to the weight Defendants suggest they are.

7 In this regard, *Chalmers v. Los Angeles*, 762 F.2d 753 (9th Cir. 1985), is clearly  
 8 distinguishable. In *Chalmers*, the plaintiff received a seller’s permit to sell t-shirts at the Los  
 9 Angeles Museum of Art from the California State Board of Equalization and a Business Tax  
 10 Registration Certificate from the City’s Tax and Permit Division. *Id.* at 755. Nevertheless,  
 11 “[g]iven the obvious ambiguity in [the applicable] ordinances, [the plaintiff] sought . . . to clarify  
 12 the meaning of the regulation[s] by resort to City officials.” *Id.* at 758. The City Clerk’s Office  
 13 reassured her that her planned activities were permitted. *Id.* at 756. Thereafter, the plaintiff was  
 14 harassed, threatened with arrest and prosecution and ultimately prevented from selling her t-shirts.  
 15 *Id.* The Ninth Circuit found that Los Angeles’ “ordinance scheme itself was [not] necessarily a  
 16 violation of due process. Rather the due process violation occurred in the manner in which [the  
 17 facially] inconsistent scheme was implemented and enforced.” *Id.* at 758. Specifically, the Ninth  
 18 Circuit noted that:

19 [t]his system-wide lack of coordination [(i.e., one branch of government advising  
 20 the plaintiff that an ordinance permitted her planned activities, while another branch  
 21 of government enforced a conflicting ordinance)] could not have been prevented by  
 22 [the plaintiff]. She did everything possible to obtain clarification of the vending  
 laws. The City failed to support a uniform interpretation of the facially inconsistent  
 ordinances despite an obvious need to take further steps to minimize the dangers of  
 arbitrary enforcement.

23 *Id.* at 759 (internal quotation marks and citation omitted).

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 26 <sup>14</sup> The Court previously found that whether “airport authorities had the power to impose and  
 collect fees is beside the point.” *See* Doc. #44, p. 7.

1 Here, there is no indication that Defendants themselves received any comparable  
2 reassurance from an authority charged with the implementation or enforcement of NRS 482.31575.  
3 Moreover, while not fatal to their void-for-vagueness defense, the fact that Defendants never  
4 sought clarification as to their legal obligations under NRS 482.31575 is damaging nonetheless.  
5 Indeed, “vagueness concerns diminish when the regulated person has ‘the ability to clarify the  
6 meaning of the regulation . . . by resort to an administrative process.’” *Carrigan v. Comm’n on*  
7 *Ethics of State*, 129 Nev. Adv. Op. 95, 313 P.3d 880, 886 (2013) (quoting *Vill. of Hoffman Estates*,  
8 455 U.S. at 498). Here, there is no indication of an administrative or official process by which  
9 Defendants might have sought clarification as to the meaning of NRS 482.31575. Nevertheless,  
10 Defendants certainly had the opportunity to seek guidance via an inquiry to the Attorney General.  
11 In fact, Thompson recommended precisely this. Instead, Defendants relied on others’  
12 unauthoritative and flawed interpretation of the statute. Unfortunately for Defendants, due process  
13 does not afford relief merely because “everyone else was doing it.”

14 Finally, to the extent Defendants argue that Plaintiffs rented cars at fair market prices with  
15 the ACRFs fully and accurately disclosed in advance in compliance with the terms of McCarran’s  
16 Concession Agreements, the Court is unpersuaded. First, whether the Plaintiffs rented vehicles at  
17 fair market prices with advance notice that the total amount included the ACRF is immaterial to a  
18 determination of whether Defendants had fair notice of the conduct which NRS 482.31575  
19 proscribed. Moreover, in *Sobel*, the Court specifically distinguished between the permissible  
20 practice of *charging* customers an ACRF and the prohibited practice of charging such a fee *while*  
21 *advertising and quoting* a base rental rate that does not include the ACRF. *See Sobel I*, 2007 WL  
22 2710725, \*4 (“The issue . . . is not whether airport concession fees may be charged to customers,  
23 the issue is whether such charges must be reflected within the rate advertised and quoted to  
24 customers.”). Finally, the Court has already rejected as a matter of law Hertz’s argument that the  
25 plaintiffs’ claims were barred because the named plaintiffs paid their rental charges with full  
26 knowledge of the fee they now claim is improper. *See Sobel II*, 698 F. Supp. 2d at 1222-24

1 (concluding that Hertz may not rely on the voluntary payment doctrine as a defense to the  
2 plaintiffs' claims).

3 Recognizing that a statute is unconstitutionally vague if it misleads the individuals it  
4 regulates into thinking that their conduct is not proscribed, *see Gentile v. State Bar of Nev.*, 501  
5 U.S. 1030, 1048 (1991), the Court is unpersuaded that NRS 482.31575 is one such statute. The  
6 statute itself, while ambiguous, was not so vague that it failed to "provide people of ordinary  
7 intelligence a reasonable opportunity to understand what conduct it prohibits." *See S.O.C., Inc. v.*  
8 *Cnty. of Clark*, 481 F. Supp. 2d 1122, 1134 (D. Nev. 2007) (citing *Hill v. Colo.*, 530 U.S. 703, 732  
9 (2000)). While Defendants may disagree with the Court's interpretation of NRS  
10 482.31575—preferring instead the interpretation of others in the industry—the fact remains that  
11 Defendants had fair notice of the statute and its potential application to their conduct. Accordingly,  
12 the Court rejects Defendants' due process defense.

### 13 **3. Conclusion**

14 In sum, it is undisputed that the ACRF that Defendants charged to their customers is  
15 separate and distinct from the concession fee that the airports charge Defendants. Moreover, it is  
16 undisputed that Defendants failed to include the ACRF in their base rental rate and instead passed  
17 on the concession fee as a surcharge on top of that base rental rate. As such, no genuine issues of  
18 material fact remain concerning whether Defendants' pricing practices violated NRS 482.31575.  
19 Finally, because NRS 482.31575 afforded fair warning of the conduct that was proscribed,  
20 Defendants are not entitled to a due process defense. Summary judgment in favor of Defendants is  
21 therefore denied.

### 22 **B. Defendants' Motion for Summary Judgment on Damages and Restitution**

23 Defendants also seek an adjudication by the Court that Plaintiffs are not entitled to a money  
24 judgment for their statutory violation of NRS 482.31575. In essence, Defendants argue that  
25 Plaintiffs incurred no damages and Defendants retained no economic benefit as a result of their  
26 failure to comply with NRS 482.31575. NRS 482.31585 (the "remedial statute") provides for a

1 cause of action for “damages and appropriate equitable relief” for violations of NRS 482.31575.  
2 While the statute does not further define “damages,” the Court shall construe the term to mean  
3 *actual* damages in accordance with the Plaintiffs’ Second Amended Complaint. *See* Doc. #11, p.  
4 11 (praying for “damages . . . in the full amount of the injuries determined to have been sustained  
5 by them”). Insofar as Plaintiffs seek actual damages pursuant to NRS 482.31575, they must  
6 establish that they have been injured or suffered a loss. *See Davis v. Beling*, 128 Nev. Adv. Op. 28,  
7 278 P.3d 501, 512 (2012) (“‘actual damages’ are defined as ‘[a]n amount awarded to a complainant  
8 to compensate for a proven injury or loss’”) (quoting *Black’s Law Dictionary* 445 (9th ed. 2009));  
9 *see also Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 784 P.2d 954,  
10 955 (1989) (“[t]he party seeking damages has the burden of proving both the fact of damages and  
11 the amount thereof”).

12 Viewing the evidence in the light most favorable to Plaintiffs, the Court finds that Plaintiffs  
13 failed to establish that they suffered any *actual* damages. As the Court has stated on numerous  
14 occasions, this case does not concern the propriety of charging the ACRFs; rather, it concerns only  
15 the manner in which the ACRFs were charged. *See* Doc. #44, p. 6 (“[t]he issue . . . is not whether  
16 airport concession fees may be charged to customers, the issue is whether such charges must be  
17 reflected within the rate advertised and quoted to customers”) (citing *Sobel I*, 2007 WL 2710725, at  
18 \*4). As such, Plaintiffs cannot demonstrate that they were harmed merely by virtue of the fact that  
19 Defendants charged an ACRF. Instead, Plaintiffs must demonstrate that they were harmed by the  
20 manner in which the Defendants charged the ACRF. In this regard, Plaintiffs allege that they were  
21 harmed when Defendants charged a higher total rate than they otherwise could have charged had  
22 they complied with NRS 482.31575. *See* Doc. # 11, ¶14. However, Plaintiffs’ allegation in this  
23 regard is pure conjecture as they fail to proffer any evidence in support thereof. Instead, Plaintiffs  
24 offer that imposing the ACRF as an unbundled fee must have been profitable to Defendants  
25 because they continued to do so even after the Court’s ruling in *Sobel*. *See* Doc. #88, p. 3. While  
26 Plaintiffs’ theory in this regard is appealing, it does not constitute evidence sufficient to overcome

1 summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986) (plaintiff  
 2 “may not rest upon the mere allegations or denials of [the defendant’s] pleading, but . . . must set  
 3 forth . . . sufficient evidence supporting the claimed factual dispute”) (quoting *First Nat’l Bank of*  
 4 *Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)) (internal quotation marks omitted).

5 Defendants, on the other hand, present sworn expert testimony that “[t]he prices Plaintiffs  
 6 paid reflect the fair market value of the vehicle rentals at the time they occurred, and the total cost  
 7 to Plaintiffs would have been the same whether the ACRF was ‘bundled’ with the vehicle rental  
 8 rate or not.” *See* Doc. #67 (Harris Decl.), ¶¶4-6. In response, Plaintiffs offer an unsworn “rebuttal”  
 9 to Robert G. Harris’ (“Harris”) Expert Report in which Gilbert R. Coleman (“Coleman”) contests  
 10 the validity of Harris’ conclusion. *See* Doc. #88, Ex. 1. Ignoring for a moment the fact that  
 11 Coleman’s statement is unsworn, and thus inadmissible,<sup>15</sup> the Court nevertheless finds that his  
 12 “rebuttal” and counter-theory that “100% of the ACRF are damages” are insufficient to  
 13 demonstrate the existence of a genuine dispute as to actual injury. Plaintiffs present no evidence of  
 14 what the fair market value of the rental vehicles would have been if Defendants had bundled the  
 15 ACRF properly. As such, the Court has no reasonable basis on which to find or calculate actual  
 16 damages and any attempt to do so would be improperly speculative. *See Bader v. Cerri*, 96 Nev.  
 17 352, 609 P.2d 314, 357 (1980) (where “a reasonable method for ascertaining the extent of damage  
 18 is offered through testimony, the fact that some uncertainty exists as to the actual amount of  
 19 damage sustained, does not preclude recovery”) (citing *Brown v. Lindsay*, 68 Nev. 196, 228 P.2d  
 20 262 (1951)), overruled on other grounds by *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5  
 21 P.3d 1043 (2000). Because Plaintiffs have failed to prove the existence and extent of damages, the  
 22 Court finds that summary judgment in favor of Defendants is appropriate on this basis.

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 25 <sup>15</sup> *See Shuffle Master, Inc. v. MP Games LLC*, 553 F. Supp. 2d 1202, 1210-11 (D. Nev. 2008)  
 26 (“an unsworn expert report is inadmissible”); *see also* Fed. R. Civ. P. 56(e); Fed. R. Evid. 603 (to be  
 admissible, testimony must be sworn).

1           Insofar as Plaintiffs seek restitution of class members’ unlawful payments to Defendants,  
 2 the Court determines the request to be “appropriate equitable relief” in accordance with the  
 3 remedial statute. As Defendants are undoubtedly aware, in *Sobel*, the Court determined that  
 4 restitution was an appropriate equitable remedy under both the remedial statute and on the  
 5 plaintiffs’ claim for unjust enrichment. *See Sobel v. Hertz Corp.*, 291 F.R.D. 525, 538-42 (D. Nev.  
 6 2013) (No. 3:06-cv-545-LRH-RAM, Doc. #332) (order on motions for summary judgment and  
 7 class certification) (“*Sobel III*”). Therein, the Court cited three bases on which the equitable  
 8 remedy of restitution is available in Nevada.

9           First, “[u]njust enrichment exists when the plaintiff confers a benefit on the  
 10 defendant, the defendant appreciates such benefit, and there is ‘acceptance and  
 11 retention by the defendant of such benefit under circumstances such that it would be  
 12 inequitable for him to retain the benefit without payment of the value thereof.’”  
 13 *Certified Fire Protection Inc. v. Precision Construction*, 283 P.3d 250, 257 (Nev.  
 14 2012) (quoting *Unionamerica Mortgage and Equity Trust v. McDonald*, 97 Nev.  
 210, 626 P.2d 1272, 1273 (1981)). Second, Nevada courts have awarded restitution  
 where the award was necessary to effectuate the purpose of some regulatory regime,  
 even absent a showing of unjust enrichment. *See Feldman v. State*, 96 Nev. 614, 615  
 P.2d 238, 241 (1980); *Southwest Gas Corp. v. Public Service Commission*, 96 Nev.  
 657, 614 P.2d 1080, 1082 (1980).

15 *Id.* at 538-39. Third, the Court found “independent reasons why restitution is a viable remedy,”  
 16 including “when a contractual provision is unenforceable due to illegality, at least where restitution  
 17 effectuates the statutory purpose.” *Id.* at 539-40 (citing Restatement (Third) of Restitution &  
 18 Unjust Enrichment §32(1) (2011); Dan B. Dobbs, *Law of Remedies: Equity, Damages, and*  
 19 *Restitution* § 13.6 (2d ed. 1993)).

20           Here too, Plaintiffs have established that Defendants collected and retained an unlawful  
 21 payment—the unbundled ACRF.<sup>16</sup> Accordingly, they are entitled to restitution in the amount of the  
 22 unlawfully collected ACRF. *See Sw. Gas Corp. v. Pub. Serv. Comm’n*, 96 Nev. 657, 614 P.2d  
 23 1080, 1082 (1980) (finding that customers were entitled to a “refund” of the amounts that could not  
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25           <sup>16</sup> Because the ACRF that short-term lessees pay to Defendants is separate and distinct from  
 26 the concession fee Defendants pay to the airports, the fact that Defendants collected the unbundled  
 ACRF is, in and of itself, sufficient proof that Defendants were unjustly enriched.



1 legally be charged); *see also Feldman v. State*, 96 Nev. 614, 615 P.2d 238, 241 (1980) (finding that  
2 defendant who procured the fees without authority was not entitled to retain them).

3 Defendants have failed to put forth any principled argument as to why the Court should  
4 depart from the reasoning set forth in *Sobel*. First, Defendants argue that Plaintiffs are not entitled  
5 to restitution because they were not unjustly enriched when they collected money from customers  
6 in the form of an ACRF and remitted those funds to the airports as concession fees. Defendants’  
7 assertion in this regard is premised on the faulty notion that the concession fee and the ACRF are  
8 one and the same. The Court has already rejected Defendants’ argument in this regard, finding that  
9 the concession fee and the ACRF are separate and distinct. That Defendants may have used funds  
10 from the ACRFs to defray the expense of their independent obligation to pay concession fees to the  
11 airports does not change the fact that they retained the proceeds of the improper ACRF. Moreover,  
12 that Defendants may have lawfully expended the ACRF proceeds for the benefit of Plaintiffs or that  
13 Plaintiffs may have ultimately benefitted from their payments to Defendants is irrelevant. *See Stolz*  
14 *v. United Brotherhood of Carpenters & Joiners, Local Union No. 971*, 620 F. Supp. 396, 401 (D.  
15 Nev. 1985) (finding that restitution was a proper remedy even where the illegally collected dues  
16 were lawfully expended for the members benefit). Finally, the Court rejects Defendants’ somewhat  
17 confused argument that awarding a money judgment would result in a penalty or forfeiture to  
18 Defendants and a windfall to Plaintiffs. Quite simply, Defendants imposed an ACRF on Plaintiffs  
19 in a manner that was contrary to Nevada law. Allowing Defendants to retain this unlawfully  
20 collected benefit would be inequitable under the circumstances.

21 Next, Defendants attempt to distinguish *Feldman* and *Southwest Gas* by arguing that the  
22 Plaintiffs in this case are without prosecutorial discretion “to impose penalties and pocket the  
23 proceeds as if they were exercising governmental enforcement authority and discretion” is severely  
24 misguided.<sup>17</sup> Here, however, the remedial statute explicitly provides for a private right of action for  
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26 <sup>17</sup> In *Sobel*, the Court cited *Feldman* and *Southwest Gas* for the proposition that Nevada courts  
have approved of restitutionary award without a showing of actual injury. *Sobel III*, 291 F.R.D. at 539.



1 “damages and appropriate equitable relief” for violations of NRS 482.31575. Defendants cannot  
 2 seriously challenge that Plaintiffs have the right to seek just that—damages and appropriate  
 3 equitable relief. In *Feldman*, the Nevada Supreme Court determined that because Feldman had  
 4 procured the “service fees” without authority, he was not entitled to retain them. 615 P.2d at 241.  
 5 The court further found that requiring Feldman to return the fees was “justified and valid.” *Id.*  
 6 Additionally, in *Southwest Gas*, the Nevada Supreme Court approved of a similar remedy where a  
 7 utility company had overcharged its customers for natural gas. 614 P.2d at 1082. That the Nevada  
 8 Supreme Court did not characterize the “penalty order” in either of these cases as “restitution” or  
 9 “equitable relief” does not change the nature of the remedy or its purpose—to disgorge the  
 10 unlawful payment from the wrongdoer. Moreover, Defendants’ insinuation that Plaintiffs must  
 11 prove actual damages in order to enforce their right to appropriate equitable relief is similarly  
 12 misplaced.<sup>18</sup> As the Court fully explained in *Sobel*, Defendants’ reasoning in this regard would  
 13 eliminate the distinction between restitution and compensatory damages. *Sobel III*, 291 F.R.D. at  
 14 538-40.

15 Defendants next challenge that “restitution is an available remedy when a contractual  
 16 provision is unenforceable due to illegality, at least where restitution effectuates the statutory  
 17 purpose.” *See id.* at 540 (citing Restatement (Third) of Restitution & Unjust Enrichment § 32(1)  
 18 (2011)). Specifically, Defendants argue that section 32 of the Restatement is only applicable where  
 19 “‘a party who has rendered a valuable performance pursuant to an agreement that the law condemns  
 20 as illegal or otherwise prohibits’ is prohibited from receiving the benefit of the contractual bargain  
 21 because ‘neither party to such a contract can enforce it to obtain the promised exchange.’” Doc.

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22  
 23 <sup>18</sup> *Perrone v. General Motors Acceptance Corporation*, to which Defendants cite, is completely  
 24 inapposite as the court therein determined only that detrimental reliance was an element of actual  
 25 damages under the Truth in Lending Act (“TILA”). 232 F.3d 433, 438-39 (5th Cir. 2000). In contrast  
 26 to the remedial statute in this case, which sets forth an explicit right to “appropriate equitable relief,”  
 the court in *Perrone* further determined that TILA does not confer upon private litigants an implied  
 right to equitable relief. *See id.* at 439 (“If Congress had meant for restitution to be the measure of  
 actual damages, it could have easily said so in the statute. It did not.”).

1 #64, p. 14 (citing Restatement § 32, comment a.). However, Defendants miss the point when they  
 2 argue that “[r]enting a car at the airport is not a transaction that the law condemns and refuses to  
 3 enforce.” The Court did not declare the transaction itself to be illegal. Rather, the Court  
 4 determined that a single provision of the contract—the unbundling of the ACRF—violated the law.  
 5 Whereas here, “the violation of a regulatory statute provides the grounds for enforceability,  
 6 ‘[r]estitution is [ ] available . . . unless the court concludes that the allowance of restitution would  
 7 defeat the policy of the regulation in question.’” *Sobel III*, 291 F.R.D. at 540 (citing Restatement  
 8 §32, comment e.). Moreover, “restitution is especially appropriate when the statutory purpose  
 9 would be undermined by the failure to award restitution.” *Id.* (citing *Stock v. Meek*, 35 Cal. 2d 809,  
 10 221 P.2d 15, 21 (1950) (Traynor, J.) (awarding restitution of excess interest in a usury case even  
 11 though plaintiff expressly agreed to usurious rate).

12 Defendants further argue that restitution is unavailable to Plaintiffs here because the  
 13 supposedly unenforceable contract has been fully performed. Defendants’ argument in this regard  
 14 demonstrates their misunderstanding of both the Restatement and the Court’s ruling in *Sobel*.<sup>19</sup> In  
 15 *Sobel*, the Court did not premise its award of restitution on § 32(2), which requires a showing of  
 16 unjust enrichment. Rather, the Court relied on § 32(1), which does not depend on unjust  
 17 enrichment. Comment f., to which Defendants cite for the above proposition, expressly states that  
 18 “[i]f the prohibited transaction has been completed on both sides, restitution will nevertheless be  
 19 available in cases governed by § 32(1), because the remedy in such cases is independent of unjust  
 20 enrichment.” Instead, statutory purpose justifies an award of restitution under these circumstances.  
 21 In this regard, Illustration No. 1, to which the Restatement refers for cases within § 32(1) is more  
 22 apt.

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23  
 24 <sup>19</sup> Defendants reference to Illustration No. 22 is similarly misplaced as it exemplifies an  
 25 entirely different set of circumstances whereby “the claim to reverse a completed exchange depends  
 26 on a showing of unjust enrichment.” Moreover, the hypothetical deals with a situation in which the  
 ordinance requiring registration was not at issue under the lease agreement between landlord and  
 tenant. In contrast here, the agreement between Defendants and Plaintiffs, pursuant to which  
 Defendants unlawfully charged Plaintiffs an ACRF, directly implicates the statute at issue.

1 A borrows money from B at a market rate of interest that the laws of the jurisdiction  
 2 condemn as usurious, then repays the loan in accordance with its terms. The statute  
 3 regulating the parties' transaction affords defensive relief only: it provides that the  
 4 borrower may not be compelled to pay interest exceeding the stated maximum, but it  
 5 is silent on the borrower's right to restitution of excess interest paid. A has a claim  
 against B under the rule of § 32(1) to recover interest paid in excess of the amount to  
 which the debt could have been legally enforced. A's claim in restitution does not  
 depend on the state of mind of either party, nor on a showing that B was unjustly  
 enriched by receipt of interest at a market rate.

6 Similarly here, Defendants charged Plaintiffs an ACRF in violation of Nevada law. Accordingly,  
 7 Plaintiffs have a claim against Defendants under § 32(1) to recover the unlawfully collected ACRF.  
 8 As with Illustration No. 1, the balance of the contract remains enforceable and is unaffected by  
 9 Plaintiffs' claim for restitution.<sup>20</sup> While the Court agrees with Defendants that NRS 482.31575  
 10 does not purport to regulate or limit the amount of money exchanged between private parties,<sup>21</sup> this  
 11 simply does not affect the availability of restitution as an equitable remedy under the remedial  
 12 statute where Defendants nevertheless collected an ACRF in violation of NRS 482.31575. On this  
 13 point, the remedial statute itself is dispositive.

14 Moreover, Defendants assertion that Plaintiffs enjoyed the full benefit of the ACRF when  
 15 they used the airport roadways and curbsides to access the terminal again improperly assumes that

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16  
 17 <sup>20</sup> While Plaintiffs' contracts explicitly provide for severability, this factor does not weigh on  
 18 the Court's finding in this regard. *See* Doc. #66, Ex. E, ¶14 ("If any provision of this Agreement is  
 19 determined to be unlawful, contrary to public policy, void or unenforceable, all remaining provisions  
 shall continue in full force and effect.").

20 <sup>21</sup> Defendants refer to NRS 482.31575 as "economically neutral" because it does not limit the  
 21 dollar amount that they could charge and collect. While the Court agrees that NRS 482.31575 does  
 22 not impose a ceiling on the dollar amount that Defendants may charge and collect in the same way that  
 23 a usury statute does, the Court does not agree with Defendants' characterization of the statute as  
 24 "economically neutral." By requiring that short-term lessors advertise, quote and charge a rate that  
 25 includes the entire amount, subject only to exceptions which have no applicability here, NRS  
 26 482.31575 implicitly prohibits short-term lessors from advertising, quoting, and charging a rate which  
 does not include the entire amount. This is tantamount to limiting the amount that short-term lessors  
 may require a short-term lessee to pay to that which has been properly advertised, quoted, and charged  
 as the "entire amount." Accordingly, NRS 482.31575 is not "economically neutral." Defendants  
 required Plaintiffs to pay a rate that included an ACRF that was not properly advertised, quoted, and  
 charged as the "entire amount." As such, Plaintiffs paid a greater amount that was permitted by NRS  
 482.31575.

1 the ACRF and the concession fees are one and the same. Defendants attempt to conflate the  
2 performance due pursuant to each of these agreements remains unavailing. The benefit to which  
3 they refer—use of airport roadways and curbsides to access the terminal—is, in fact, a benefit they  
4 enjoy in return for payment of the concession fee to the airports. Defendants assertion to the  
5 contrary—that they “have no occasion to traverse airport roadways and curbsides except to  
6 transport customers like Plaintiffs to and from their rental cars”—is remarkably disingenuous.  
7 Defendants undeniably benefit from the use of airport roadways and curbsides as it allows them to  
8 maintain and operate a rental car business at the airport.

9 To the extent Defendants argue that a money judgment to Plaintiffs would not effectuate  
10 any statutory purpose of NRS 482.31575, the Court flatly disagrees. As Defendants concede, in  
11 *Sobel*, the Court identified three potential policies behind the statute: (1) regulating competition  
12 among rental car companies; (2) protecting the airport by preventing consumers from perceiving  
13 the airport fees as “an additional tax on airport customers,” and (3) preventing customer deception  
14 about the total cost of renting a car. Doc. #64, p. 15 (citing *Sobel III*, 291 F.R.D. at 536-37; *Sobel*  
15 *I*, 2007 WL 2710725, at \*3-4). Defendants, however, utterly fail to explain how a monetary award  
16 of restitution would “vindicate none of these policies.” Moreover, the Court has already dismissed  
17 Defendants’ argument that restitution would not serve the statutory purpose of preventing customer  
18 deception simply because Plaintiffs were aware of the ACRF in advance of their rentals.

19 Finally, Defendants assert that Plaintiffs’ demand for a money judgment does not seek  
20 “equitable relief” under Nevada law, but rather seeks restitution at law. Defendants further assert  
21 that the statutory phrase “appropriate equitable relief” distinguishes between remedies at law and  
22 genuine equitable remedies, which do not include a personal money judgment against a defendant.  
23 While there can be no genuine dispute as to the distinction between remedies at law and remedies  
24 in equity, the Court is unpersuaded that the remedy Plaintiffs seek is restitution at law as opposed  
25 to equitable restitution. *Great-West Life & Annuity Insurance Company v. Knudson*, to which  
26 Defendants refer, is entirely inapposite on this point. There, the plaintiffs were seeking damages

1 for the defendant's unfulfilled past contractual obligation to pay money. 534 U.S. 204, 210 (2002).  
 2 The Supreme Court rejected the plaintiffs' attempts to characterize the relief sought as "equitable"  
 3 restitution, finding instead that money damages seeking compensation for a loss resulting from the  
 4 defendant's breach of legal duty was essentially an action for breach of contract and, thus,  
 5 "quintessentially an action at law." *Id.* at 210-14 (internal citations and quotation marks omitted).  
 6 Similarly, in *Ahlers v. Ryland Homes Nevada, LLC*, to which Defendants also cite, the plaintiffs'  
 7 claims relied on a contract as the basis for relief. No. 52511, 2010 Nev. Unpub. LEXIS 209, at \*4-  
 8 5 (April 16, 2010). In contrast, here, Plaintiffs' claims do not arise out of a contract, nor do  
 9 Plaintiffs seek to enforce any rights thereunder. Rather, they are asserting title to and the right to  
 10 possess particular property, the ACRFs, which were wrongly obtained by Defendants. As such,  
 11 Plaintiffs claim for restitution is properly characterized as a claim for equitable relief. Neither  
 12 *Knudson* nor *Ahlers* involved claims for restitution to remedy "wrongdoing" or "ill-gotten gains,"  
 13 and are thus distinguishable on this basis as well. *See e.g., Trs. of the Nw. Laborers-Emp'rs.*  
 14 *Health and Sec. Trust v. Malone*, No. 09-05399, 2010 U.S. Dist. LEXIS 125442, at \*8-9 (W.D.  
 15 Wash. Nov. 29, 2010) (distinguishing *Knudson* and finding that restitution is equitable where it is  
 16 sought for purposes of remedying "wrongdoing"); *Med. Benefits Admin's of MD, Inc. v. Sierra*  
 17 *Railroad Co.*, No. S-06-2408, 2007 U.S. Dist. LEXIS 74595, at \*16-17 (E.D. Cal. Oct. 5, 2007)  
 18 (distinguishing *Knudson* because it involved no allegation of wrongdoing or "ill-gotten gains");  
 19 *Sierra Railroad*, 2007 U.S. Dist. LEXIS 74595, at \*17 ("claims for [equitable] restitution relating  
 20 to 'ill-gotten gains' of a defendant are permissible when a plaintiff alleges fraud or wrongdoing").<sup>22</sup>

21 ///

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22  
 23 <sup>22</sup> Defendants argument that a defendant does not engage in "fraud or wrongdoing" when the  
 24 defendant has a good faith dispute over the existence of the legal obligation that supposedly gives rise  
 25 to the "wrongdoing" has no merit. The case to which Defendants cite concerned a good faith dispute  
 26 over the parties legal obligations arising out of a contract and, thus, has no applicability to the present  
 dispute. *See Trustees ex rel. Teamsters Benefit Trust v. Doctors Med. Ctr. Of Modesto, Inc.*, 286 F.  
 Supp. 2d 1234 (N.D. Cal. 2003).

1 Defendants' related contention that plaintiffs cannot show that there are particular "funds or  
2 property" in Defendants' possession to which they are entitled because none of the ACRF money  
3 remains in Defendants' possession is similarly without merit. Defendants evidently believe that if  
4 they characterize the ACRF as merely a "pass through" fee, intended to compensate for their  
5 contractual obligation to pay the airport concession fees, the transaction would not involve any  
6 "wrongdoing" or "ill-gotten gains." The Court has already rejected Defendants' position in this  
7 regard—the ACRFs are separate and distinct from the airport concession fees. Moreover,  
8 Defendants fail to cite any Nevada case law requiring equitable tracing. *See IM Partners v. Debit*  
9 *Direct Ltd.*, 394 F. Supp. 2d 503, 520 (D. Conn. 2005) (refusing to apply the equitable tracing  
10 requirement found in *Knudson* because it is not required under Connecticut law). While  
11 Defendants may have already spent the wrongfully obtained ACRFs, Plaintiffs are nevertheless  
12 entitled to equitable restitution of the same.

13 Lastly, the Court rejects Defendants' assertion that monetary relief is barred by the  
14 "voluntary payment doctrine." In *Sobel*, the Court determined, as a matter of law, that Hertz could  
15 not rely on the voluntary payment doctrine as a defense to the plaintiffs' claims. *Sobel II*, 698 F.  
16 Supp. 2d at 1224. The Court maintains that to allow Hertz to avoid liability for an unfair pricing  
17 practice via the voluntary payment doctrine would nullify the consumer protection purpose of the  
18 statute and be contrary to the intent of the Nevada legislature, which explicitly set forth a civil  
19 remedy for precisely this type of violation. Accordingly, as in *Sobel*, Defendants may not rely on  
20 the voluntary payment doctrine as a defense to Plaintiffs' claims.

### 21 **C. Plaintiffs' Motion for Summary Judgment**

22 Plaintiffs seek summary judgment for liability and equitable relief on their claim for  
23 violation of NRS 482.31575 and summary judgment on their claim for unjust enrichment. Above,  
24 the Court addressed all of the issues asserted in Plaintiffs' Motion for Summary Judgment and  
25 contested in subsequent briefing. As to Plaintiffs' first cause of action for violation of NRS  
26 482.31575, the Court has concluded as a matter of law that the statute required rental car

1 companies to include the ACRF in the base rate that the companies advertised, quoted, and charged  
2 to individual lessees during the period relevant to this case. Because there are no disputed issues of  
3 material fact concerning Defendants' non-compliance with this requirement, the Court shall grant  
4 Plaintiffs' Motion for Summary Judgment as to liability on their claim for violation of NRS  
5 482.31575. Insofar as Defendants assert a "fair notice" due process defense, the Court finds that it  
6 does not preclude summary judgment in Plaintiffs' favor. Viewing the evidence in the light most  
7 favorable to Defendants, the Court finds that Defendants have failed to carry their burden of  
8 establishing that NRS 482.31575 was unconstitutionally vague.

9 Insofar as Plaintiffs are entitled to recover "damages and appropriate equitable relief" for  
10 Defendants' violation of NRS 482.31575, the Court finds that summary judgment is appropriate as  
11 to Plaintiffs' claim for equitable restitution of the unlawfully collected ACRFs.<sup>23</sup> Because there are  
12 no disputed issues of fact concerning Defendants' unlawful collection and retention of the ACRFs,  
13 Plaintiffs are entitled to restitution of the unlawfully collected ACRFs.<sup>24</sup> Accordingly, summary  
14 judgment on Plaintiffs' claim for "appropriate equitable relief" in the form of restitution is  
15 granted.<sup>25</sup>

16  
17 <sup>23</sup> Plaintiffs do not seek summary judgment on the issue of damages for Defendants' violation  
18 of NRS 482.31575. Nevertheless, because Plaintiffs failed to proffer any admissible evidence that  
19 Plaintiffs suffered any actual damages by virtue of the manner in which Defendants charged the  
20 ACRFs, the Court finds that summary judgment in favor of Defendants on Plaintiffs' claim for  
21 damages is appropriate.

22 <sup>24</sup> Plaintiffs are also entitled to prejudgment interest from the date the Complaint was served  
23 to the time at which the judgment is satisfied, at the rate specified by law. *See Sobel III*, 291 F.R.D.  
24 at 544 (granting prejudgment interest under NRS 17.130(2), which provides that "the judgment draws  
25 interest from the time of service of the summons and complaint until satisfied"). Moreover, Plaintiffs  
26 concede that they are not entitled to recover any portion of the ACRF attributable to gross revenue from  
goods and services other than leasing passenger cars. *See* Doc. #101, p. 14.

<sup>25</sup> To the extent Defendants contend that Plaintiffs are not entitled to summary judgment as  
against National Rental Car ("National"), the Court disagrees. Vanguard operates as both Alamo and  
National, and maintains a uniform practice of charging all of their customers an unbundled ACRF in  
violation of NRS 482.31575. *See* Doc. #97 (Stock Decl.), ¶3, Ex. 3. Vanguard is the named Defendant



As to Plaintiffs' second cause of action for unjust enrichment, the Court shall grant Plaintiffs' Motion for Summary Judgment. Because Defendants were without legal authority to collect the unbundled ACRF from Plaintiffs, Defendants benefitted from an unjustified windfall. Allowing Defendants to retain the unlawfully collected ACRFs would encourage noncompliance with NRS 482.31575 and grant a windfall to Defendants simply because they charged the ACRF in an unauthorized manner. Accordingly, the Court finds Defendants liable for unjust enrichment. Nevertheless, the Court finds that a monetary remedy is inappropriate. As the Court determined in *Sobel*, "a plaintiff may not recover [ ] twice for the same injury simply because he or she has two legal theories." *Sobel III*, 291 F.R.D. at 541 (citing *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. Adv. Op. 43, 245 P.3d 547, 549 (2010)) (internal quotation marks omitted). Because the Court has determined that restitution under the remedial statute is appropriate, Plaintiffs' request for restitution on their unjust enrichment claim is denied.

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment on Liability (Doc. #63) is DENIED.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment on Damages and Restitution (Doc. #64) is GRANTED in part and DENIED in part in accordance with this Order.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment (Doc. #73) is GRANTED.

IT IS SO ORDERED.

DATED this 23rd day of June, 2014.

  
LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

in this action and Defendants do not contend that National is a distinct legal entity. Accordingly, Plaintiffs are entitled to summary judgment against Vanguard (i.e., Alamo and National).